

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0486**

**Withholding Tax-Responsible Officer**

**February 1994-June 1995**

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**ISSUE(S)**

I. **Tax Administration**— Responsible Officer

**Authority:** IC 6-8.1-10-9(c)

Taxpayer protests the withholding tax assessment

**STATEMENT OF FACTS**

Taxpayer, in a meeting with the hearing officer on November 4, 1998 protested the responsible officer billing and states there are other responsible officers who should make payment. Taxpayer states that management also reduced his wages from \$100,000 to \$50,000 after the department took monies from the company's bank account. Taxpayer further brought copies of personal expenses and states he cannot afford to pay more than \$150 a month. The estimated outstanding liability is currently over \$79,000.

The department has delved into and found additional evidence that the taxpayer erred in his statements.

Company A incorporated on January 3, 1992 consisted of three responsible officers, including the taxpayer. Company A, an Indiana corporation, filed bankruptcy which was converted from Chapter 11 to Chapter 7 in December 1997. In the meantime, the taxpayer obtained a new federal identification number and incorporated company B with the initials of Company A in Delaware on July 29, 1997. The liabilities are current for the newly formed company .

Taxpayer told the hearing officer that management reduced his wages but failed to give the hearing officer additional information. On November 12, 1998, the Sheriff department contacted the hearing officer to inquire about the payment the taxpayer offered. The deputy sheriff states that he offered to pay \$100 a month. This amount would not pay the interest due and should be increased. The Deputy

Sheriff is to meet with the taxpayer on November 13, 1998.

I. **Tax Administration** – Responsible officer

**DISCUSSION**

At issue is whether the taxpayer should only pay one third of the liability

Taxpayer states he was not the only responsible officer and he should only pay one third of the assessment. In addition no more than one hundred fifty dollars (\$150) a month is available after paying his monthly bills and taking care of his family.

IC 6-8-1-10-9( c) states:

Unless a clearance is issued under subsection (g), for a period of one (1) year following the filing of the form of notification with the department, or the filing of all necessary tax returns as required by this title, including the final tax return, whichever is later, the corporate officer and directors remain personally liable, subject to IC 23-1-35-1(e) or IC 23-7-1.1, for any acts or omissions that result in the distribution of corporate assets in violation of the interests of the state or a political subdivision (as defined in IC 36-1-2-13). An officer or director held liable for an unlawful distribution under this subsection is entitled to contribution:

- (1) from every other director who voted for or assented to the distribution, subject to IC 23-1-35-1(e) or IC 23-7-1.1; and
- (2) from each shareholder for the amount the shareholder accepted.

IC 6-8-1-10-9 (d) states:

The corporation's officers' and directors' personal liability includes all taxes, penalties, interest, and fees associated with the collection of the liability due the department or the county. In addition the penalties provided elsewhere in this title, a penalty of up to thirty percent (30%) of the unpaid tax may be imposed on the corporate officers and directors for failure to take reasonable steps to set aside corporate assets to meet the liability due the department or the county.

**FINDING**

Taxpayer's protest is denied.